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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,549

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Andrew ThoeIke

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04/09/2009

Saul Ewing LLP (Philadelphia)

Attn: Patent Docket Clerk

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Harrisburg, PA 17101

EXAMINER

TO, JENNIFER N

ART UNIT

PAPER NUMBER

2195

MAIL DATE

DELIVERY MODE

04/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,549	<b>Applicant(s)</b> THOELKE, ANDREW	
	<b>Examiner</b> JENNIFER N. TO	<b>Art Unit</b> 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1, 4-6, and 8-10 are pending for examination.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/28/2009 has been entered.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 is merely directed to a computer program (software) which is not physical "things". They are not computer components or statutory processes, as they are not "acts" being performed. Thus the claimed computer program do not defined any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. Therefore, it is directed to a non-statutory subject matter (see MPEP 2106.01 [R-6], and see Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 4-6, and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, lines 8 and 11, it is uncertain whether "a processor" of line 8 is the same or different from "a processor" of line 11.

As per claim 5, line 1-2, it is not clearly understood what is meant by "wherein read only memory code" (i.e. claim 5 depend on claim 1, however, there is no "read only memory code" recited in claim 1).

As per claim 9, lines 1-2, it is uncertain how **"a computer device is arranged" to operate** according to the method of claim 1.

As per claim 10, lines 1-2, it is uncertain how **"a computer software is arranged" to cause a computing device** to operate according to the method of claim 1.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1, 5, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al (hereafter Berg) (U.S. Patent No. 6351779), and in view of Richardson et al. (hereafter Richardson) (U.S. Patent No. 6874148).

9. Richardson was cited in the previous office action.

10. As per claim 1, Berg teaches the invention substantially as claimed including a method of operating a computing device having an operating system and a dynamic link library containing a plurality of functions accessible by an executable program, each function in the dynamic link library being associated with names (abstract; col. 2, lines 56-60; col. 6, lines 51-56; col. 8, lines 13-19), the method comprising:

configuring the computing device to provide the dynamic link library as a first part and extension part, the first part and the extension part each containing one or more of the plurality of functions (col. 2, lines 56-60; col. 3, lines 7-22);

executing the executable program using a processor of the computing device to link to functions in the first part directly by means of the associated names (col. 6, lines 50-67; col. 7, lines 1-36; col. 8, lines 1-19); and

executing the executable program using a processor of the computing device to cause the executable program to link to functions in the extension part indirectly via a further library containing additional functions (fig. 3; col. 3, lines 63-66; col. 4, lines 38-57).

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11. Berg did not specifically teach each function in the dynamic link library being associated with an ordinary number, and link to functions in the first part directly by means of the associated ordinary number.

12. However, Richardson teaches each function in the dynamic link library being associated with an ordinary number, and link to functions in the first part directly by means of the associated ordinary number (figs. 4A-4B; abstract; col. 4, lines 33-52; col. 9, line 60 through col. 10, line 46).

13. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of Berg and Richardson because Richardson teaching of associating the ordinary number to each function in the dynamic library would improved the integrity of Berg's system by enabling the program to call into extending library more easily and efficiently.

14. As per claim 5, Richardson teaches that wherein read only memory (ROM) code for use within the computing device is accessible only via further library (col. 7, lines 20-34).

15. As per claim 8, Richardson teaches that wherein the one or more functions in the first part form part of the operating system (abstract).

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16. As per claims 9-10, they are rejected for the same reason as claim 1 above.

17. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al (hereafter Berg) (U.S. Patent No. 6351779), in view of Richardson et al. (hereafter Richardson) (U.S. Patent No. 6874148), as applied in claim 1 above, and further in view of IBM Technical Disclosure (hereafter IBM) ("Forwarder Dynamic Link Libraries as a Method for Service Software", IBM Corp, New York, Vol. 38, No. 11, 1995, pages 407-408).

18. IBM was cited in the previous office action.

19. As per claim 4, Berg and Richardson teach the invention substantially as claimed in claim 1 above. However, Berg and Richardson did not specifically teach that wherein further library is arranged to link to a plurality of dynamic link libraries in the computing device.

20. However, IBM teaches that wherein further library is arranged to link to a plurality of dynamic link libraries in the computing device (figs. 1-2).

21. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of Berg, Richardson and IMB because IBM teaching of the further library is arranged to link to a plurality of dynamic

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link libraries in the computing device would improved the integrity of Berg and Richardson 's system by allowing the software developers with no access to the underlying primary code to properly design, document interfaces, fix, and enhance in the DLLs (IBM, page 408).

22. As per claim 6, IBM teaches that wherein functions within extension part are provided as private functions (pages 407-408).

### ***Response to Arguments***

23. Applicant's arguments with respect to claims 1, 4-6, and 8-10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see attached PTO 892 form for details).

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER N. TO whose telephone number is (571)272-7212. The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.



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26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VAN H NGUYEN/  
Primary Examiner, Art Unit 2194

Jennifer N. To  
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